IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2006

C O R A M

THE HONOURABLE MR.JUSTICE M.E.N.PATRUDU

W.P.No.2035 of 2003

K.Rajendiran ... Petitioner

Vs.

1. Corporation of Madras,
   rep. by its Commissioner,
   Ripen Buildings, Madras - 3.

2. Population Project Co-ordinator,
   District Family Welfare Bureau,
   Corporation of Madras, Madras.

3. S.Paramasivam ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondents 1 and 2 with G.O.Ms.No.172 dated 31.08.1995, appointing the third respondent to the post of Deputy Communication Officer and to quash the same and consequently to direct the respondents 1 and 2 to consider and promote the petitioner to the post of Deputy Communication Officer with effect from the date on which the third respondent was appointed with all other consequential benefits including backwages, and seniority.

For petitioners : Mr.V.Ajayakumar
For R3 : Mr.K.V.Dhanapal for
Mr.T.Fenn Walter Associates
For RR 1 & 2 : No appearance.

WEB COPY

O R D E R

The petitioner has joined the service of the first respondent as Computer-cum-Clerk on 20.08.1987.

2. The grievance of the petitioner is that the third respondent was appointed as Deputy Communication Officer with the first respondent, ignoring the seniority and eligibility of the petitioner herein.

https://hcservices.ecourts.gov.in/hcservices/

3. The first respondent has filed a counter contending that the third respondent was appointed as per the G.O.Ms.No.172 dated 31.8.95, as per the orders issued in W.P.No.12317/1996 and W.A.No.326/1997 and it is purely as per the orders of the Government in the said G.O. and directions of the Court, the third respondent was appointed and it is a direct recruitment into the post and it is not a case of promotion.

4. The third respondent also filed a counter stating that the Government of State has issued G.O.Ms.No.172 dated 31.8.95 appointing the third respondent as Deputy Communication Officer on direct recruitment and in fact, he was working with the first respondent as Computer-cum-Clerk on the date of issuance of G.O. and thereafter, on his representation, the Government has considered the same, since he possess all qualifications and it is not a case of promotion.

5. On behalf of petitioner, the impugned order of appointing the third respondent as Deputy Communication Officer is filed at page No.11 of the typed set. The Government Order regarding the reservation for SC/ST vacancies and the representation of the petitioner to the first respondent is also filed.

6. While So, on behalf of the third respondent G.O.Ms.No.172, dated 31.8.95 and the orders passed by this Court in W.P.No.12317/1996 are also filed.

7. The counsel for petitioner during the course of arguments has produced the order of this Court in W.A.No.326 of 1997.

8. Perused all the documents.

9. The point for determination is whether the petitioner can question the appointment of third respondent as on promotion or as a direct recruitment
2. Whether the first respondent has ignored the seniority of the petitioner in appointing the third respondent as the Deputy Communication Officer.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Points:-

In order to answer the point, it is necessary to reproduce the G.O.Ms.No.172, dated: 31.5.1995, which is as follows:

ABSTRACT

Establishment - Corporation of Madras - Thiru.S.Paramasivam, Computer District Family Welfare Bureau, Corporation of Madras - Appointment as Deputy Communication Officer in District Family Welfare Bureau - Corporation of Madras Order- Issued.

MUNICIPAL ADMINISTRATION AND WATER SUPPLY DEPARTMENT

G.O.Ms.No.172 Dated: 31.8.1995

1. Representation from Thiru S.Paramasivam, Computer dated 6.6.95.
2. Govt.D.O. Lr.No.26705/MC V/95-I dt. 15.6.95 addressed to the Commissioner, Corporation of Madras and subsequently reminder Dt.14.7.95.

ORDER:

In his representation read above, Thiru.S.Paramasivam, Computer, District Family Welfare Bureau, Corporation of Madras has represented to Government that he is employed as computer in the District Family Welfare Bureau in the Corporation of Madras from 24.4.90 and has been awarded a Certificate of Merit for his outstanding performance for the year 1993-94. Therefore appointment to the post of Deputy Communication Officer as he possesses the required following qualification.

i) P.G. Degree in Sociology from Annamalai University
ii) P.G. Degree in 'Economies' from Madurai Kamaraj University.
iii) Passed the examinations for the Certificate in Library and Information.
iv) Passed the Account Test for the Executive Officers.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2. The Govt. have carefully examined the request of Thiru S.Paramasivam, Computer in detail and order to appoint Thiru. S.Paramasivam, who is working as Computer in the scale of pay of Rs.1200-30-1560-40-2040 in the District Family Welfare Bureau as Deputy Communication Officer in the scale of pay of 2200-75-2800-100-4000 in the District Family Welfare Bureau of the Corporation of Madras with immediate effect from the date of issue of this order, pending framing of adhoc rules.

3. The Commissioner, Corporation of Madras is requested to issue necessary orders to the effect.

// BY ORDER OF THE GOVERNOR//

H.M.PANDEY
SECRETARY TO GOVERNMENT

10. A plain reading of the above G.O. clarifies that the third respondent has made a representation to the Government disclosing his qualifications etc. and after a careful examination, the Government of the State, through Municipal Administration and Water Supply Department, has issued orders of appointment of third respondent as Deputy Communication Officer in the scale of pay of Rs.1200-30-1560-40-2040. Thus, it is a clear case of direct appointment of the third respondent as Deputy Communication Officer and it is not a case of promotion.

11. The record discloses that the first respondent did not implement the G.O. issued above and therefore, the third respondent has approached this Court by filing W.P.No.12317 of 1996 wherein, a direction was given to the first respondent to implement the G.O.

12. The first respondent preferred writ appeal, aggrieved by the order of the learned single Judge.

13. In W.A.326 of 1997, in paragraph No.3, this Court has given a specific direction that when the appellant did not challenge the G.O.Ms.No.172 and as long as the said G.O. is in order, it is the duty of the appellant to implement the same. Thus, a direction was given to the first respondent to implement the G.O. and the third respondent is appointed as Deputy Communication Officer.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

14. Hence, I hold that it is not a case of promotion, it is a clear case of appointment of the third respondent by the Government through the G.O. mentioned above and the first respondent has been given direction by this Court to implement the G.O.

15. In the above circumstances, there are no merits in the writ petition.

16. Before parting with this, since it has been observed in the order of the Division Bench in W.A.No.326 of 1997 that if other employees are affected by the implementation of the said G.O., it is to protect their interests, the learned counsel for the petitioner has stated that since the petitioner is an affected party his case may be considered. Hence, he has every right to approach the Government or the Corporation for either promotion or direct appointment.

17. In the instant case, he has already given representation to the Corporation and it is stated that the same is not considered till today. Therefore, the first respondent is directed to consider the same within a period of 30 days from the date of a receipt of a copy of this order and pass necessary orders, independently, without affecting the orders in G.O.Ms.No.172 dated 31.8.95 or without violating the orders of this Court in W.P.No.12317 of 1996 and W.A. 326 of 1997, which have become final.

With the above direction, the writ petition is disposed of. No costs.
sgl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To

1. The Commissioner,
Corporation of Madras,
Ripen Buildings, Madras - 3.

2. The Population Project Co-ordinator,
District Family Welfare Bureau,
Corporation of Madras, Madras.

PV(CO)
NM(12.09.2006)

W.P.No.2035 of 2003

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/